


expenses under Federal Rule of Civil Procedure 37(a)(5)(A), and (2) how the court should apportion the expenses between them. The clerk shall assure that James L. Harris, the plaintiff's former counsel, receives electronic service of this Order and Memorandum.

The defendant's Motion to Establish Mitigation Defense and Conclusively Establish Facts (Docket No. 34) is **DENIED**.

It is so Ordered.

Entered this 20th day of November 2009.



ALETA A. TRAUGER
United States District Judge